

# STATE OF ALASKA

Department of Administration

## Alaska Public Offices Commission

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June 6, 2012

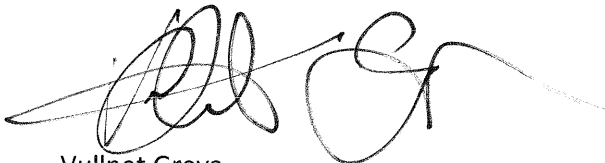
Timothy A. McKeever  
Holmes Weddle & Barcott  
701 West Eighth Avenue, Suite 700  
Anchorage, AK 99501-3408

Re: Approved Advisory Opinion Request AO 12-09-CD

Dear Mr. Kendall,

Please find attached an advisory opinion on activities of an independent expenditure group. This advisory opinion is a follow up to your May 11 and 17, 2012 letters requesting clarification on the May 7, 2012 staff issued unapproved advisory opinion 12-05-CD requested by Mr. Kendall. The conclusion contained herein has been approved by the Commission by a vote of 4 - 0.

Sincerely,  
ALASKA PUBLIC OFFICES COMMISSION



Vullnet Greva,  
Associate Attorney II

CC: Paul Dauphinais, Executive Director  
APOC Commission Members  
John Ptacin, Assistant Attorney General  
Senior Staff

Encl: Approved Advisory Opinion AO 12-09-CD

## ADVISORY OPINION REQUEST

**Number:** AO 12-09-CD  
**Requested By:** Timothy A. McKeever, on behalf of Alaska Deserves Better  
**Prepared By:** Vullnet Greva, Associate Attorney II  
**Date Issued:** May 24, 2012  
**Subject:** Activities of an Independent Expenditure group.

**Commission Decision:** The Commission approved the advice in this Advisory Opinion, June 6, 2012 by a vote of 4 - 0.

## QUESTIONS PRESENTED

Mr. Kendall, counsel for Alaska Deserves Better (ADB) has asked APOC to provide guidance and confirmation on the following set of questions:

1. Please confirm our understanding that in order to form an IEG, ADB must register just as any other “Group” does. In the appropriate box (page 9 of 12 of the current form provided by APOC) ADB should select “independent expenditure group” and provide a short explanation of ADB’s general purpose.<sup>1</sup>
2. Please confirm our understanding that the below explanation will satisfy the registration requirement mentioned in #1 above:  
“Alaska Deserves Better intends to promote responsible, ethical and transparent government in Alaska by providing the public with relevant information regarding candidates for state and local office.”
3. Please confirm that because ADB has not yet determined which candidates it intends to support or oppose, it is not required to list the names of candidates it intends to support or oppose at the time it registers with APOC.
4. Please confirm that, once ADB has registered as required and formed a political activities account, it can immediately raise contributions and make independent expenditures for and against candidates for state and local office.
5. Please confirm that ADB can make independent expenditures regarding candidates *and* assumed candidates for state and local office. Specifically, please confirm that ADB can oppose or support candidates regardless of whether they have filed a Letter of Intent with APOC and whether or not the candidates have actually specified the exact office sought.
6. Please confirm that, so long as ADB intends to support and/or oppose multiple candidates and intends to expend 33 1/3 percent or less of its funds in any year on any one race it can use its current name and need not incorporate the name of any candidate.
7. Please confirm that, as an IEG, ADB can obtain contributions and make independent expenditures in unlimited amounts, with no restriction on the amounts or sources.

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<sup>1</sup> Registering a group with the commission is done online through myAlaska and APOC’s online filing system: <https://my.alaska.gov/>.

8. Please confirm that contributions made to ADB, which will not be designated for support or opposition of a particular identified candidate or ballot measure, which are deposited by ADB into its political activities account, and are subject to disclosure and reporting under AS 15.13.040 and .110 are not donations “using the name of another” under AS 15.13.074 and that ADB is the “true source” of any such funds.
9. Please confirm that, so long as ADB does not, with respect to any expenditure – consult with, cooperate with, or act at the request of, or with the prior consent of any candidate, any candidate’s campaign treasurer or deputy campaign treasurer, or any other person acting as the principal or agent of the candidate – such expenditures will not be considered contributions to that candidate under Alaska law.
10. Please confirm that an incidental reproduction or showing of a candidate’s picture, image or likeness from a publically available source such as a website, television or mailing in a communication paid for by ADB will not be considered a contribution to that candidate under Alaska law.
11. Please confirm that incidental republication, reproduction or showing of a portion of a campaign message which is obtained from a publically available source such as a website, radio or television broadcast, or newspaper or mailing and which is not used at the suggestion, coordination, request or prior consent of any candidate, campaign treasurer, assistant treasurer, consultant, agent or principal of a campaign, will not be considered a contribution to that candidate under Alaska law.
12. Please confirm that, apart from the reporting requirements imposed in AS 15.13.040 and .110 applicable to all groups, an IEG such as ADB does not bear any additional reporting requirements.
13. Please confirm that, apart from the identification requirements in AS 15.13.090 and .135(b)(2), ADB’s communications will not be required to include any other information or disclaimers.
14. Please confirm that so long as the list of top contributors required by the provisions of AS 15.13.090 is correct at the time the communication is printed or originally produced and distributed, the requirements of that section are met.

#### **SHORT ANSWERS**

1. Yes, ADB must register with the Commission before making an expenditure in opposition to or support of any candidate.
2. Yes, staff believes that the brief explanation of ADB’s purpose satisfies the registration requirement.
3. No, ADB is not required to provide a list of candidates it intends to support or oppose.
4. Yes, once ADB has received confirmation that their registration has been completed, it can immediately raise contributions and make expenditures.
5. No, ADB may not make expenditures for or against any assumed candidates. ADB may make expenditures for or against candidates that have filed a Letter of Intent or Declaration of Candidacy.

6. Yes, as long as ADB does not expend 33 1/3 percent or more of its funds on a single candidate, it is not required to have the name of the candidate incorporated in its group name.
7. No, as a group, contributions to ADB are currently limited by Alaska's campaign finance laws. However, it appears to APOC staff that the United States Supreme Court's decision in *Citizens United v. FEC* has potentially rendered these restrictions unconstitutional as applied to groups that make only independent expenditures.
8. No, the "true source" of the funds placed in ADB's PA account are the persons making the contributions, which will be disclosed and reported according to AS 15.13.040 and AS 15.13.110.
9. Yes, as long as ADB does not make an expenditure in direct or indirect consultation or cooperate with, or act at the suggestion or request of, or have prior consent of a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal agent of the candidate, the expenditure will be an independent expenditure and not considered to be a contribution to the candidate. Whether or not ADB has coordinated with a candidate depends on a specific set of facts.
10. This question does not state all relevant facts or outline a specific transaction or activity set out in AS 15.13.374.
11. This question does not state all relevant facts or outline a specific transaction or activity set out in AS 15.13.374.
12. Yes, as a group, ADB will comply with all disclosure requirements set out in AS 15.13.040 and AS 15.13.110.
13. Yes, the identification requirements are listed in AS 15.13.090 and AS 15.13.135.
14. This question does not state all relevant facts or outline a specific transaction or activity set out in AS 15.13.374.

## **FACTS**

Through counsel, ADB provided the following facts in an advisory opinion request and then supplemented facts (and questions) in letters dated May 11, 2012 and May 17, 2012 to APOC Staff. For certain questions, ADB did not provide sufficient facts to provide specific guidance, however, staff has answered the questions to the extent possible.<sup>2</sup>

Alaska Deserves Better, Inc. ("ADB") was recently formed for the purpose of promoting responsible, ethical and transparent government in Alaska at both the state and local levels. In furtherance of that purpose, ADB intends to register with the Alaska Public Offices Commission ("APOC") as an Independent Expenditure Group ("IEG"). ADB intends to file such a registration prior to raising any funds or making any expenditures. The officers of ADB will make all decisions concerning the activities of ADB, including what campaigns or races to participate in, the nature and extent of such participation and what specific types of campaign activities it will engage in.

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<sup>2</sup> See Attachments A & B (May 11 & 17, 2012 Letters, respectively).

Contributions to ADB will be deposited into a political activities account to be established by ADB pursuant to AS 15.13.052. ADB wants to know the extent to which it must ensure its contributions are coming from the true source of funds. ADB specifically asked whether it is sufficient to check that so long as donor's name and address is printed on the check, whether that insulates ADB from a complaint.<sup>3</sup>

ADB intends to take in unlimited contributions from the public to make independent expenditures only.

ADB plans to make independent expenditures in support of, and in opposition to, candidates for both state and local office. ADB's officers have not yet identified all specific races in which it will make independent expenditures. ADB also intends to make expenditures for "assumed candidates;" candidates who have not yet filed a letter of intent to run, but in ADB's estimation, will do so.

ADB is concerned that it will spend too much money in one race, triggering the requirement that it use the candidate's name in its disclosures and disclaimers. ADB believes that it is theoretically possible that at the time of the municipal elections in October, ADB might have spent more than 33 1/3% of its receipts on a single candidate. And then later, in the November election, the calculation may have changed. ADB asked for specific guidance whether it should calculate the 33 1/3 percent rule over a year, over a 6 month period, or on an ongoing basis.<sup>4</sup>

ADB is concerned about making coordinated expenditures with candidates and asks for guidance. ADB did not provide specific facts about materials it intends to use in their ads and is encouraged to ask APOC specific questions if it feels that it may be crossing the line. ADB did state generally, that in making its independent expenditures, ADB's officers will not directly or indirectly consult with, cooperate with, or act at the suggestion or request of, or with the prior consent of any candidate, any candidate's campaign treasurer or deputy campaign treasurer, or any other person acting as a principal or agent of a candidate.

ADB is also concerned about having to change the top three contributor language in the middle of an advertisement run and asked for guidance.

## **ANALYSIS**

Groups which intend only to make independent expenditures in candidate elections must follow all campaign finance laws and regulations which relate to groups.

Groups which make expenditures in candidate elections must: (1) follow all group disclosure laws; (2) establish a political activities account (PA account); (3) adhere to group contribution limits; (4) limit expenditure activities if they are coordinated with a candidate; and (5) obey all disclaimer requirements for political communications. The current laws in each category apply to groups regardless of whether the group intends to limit its conduct to independent expenditures, except as described in Part 7 of this recommendation.

ADB asks a series of specific questions regarding how these laws apply to ADB; a group which will make no contributions to candidates; only independent expenditures.<sup>5</sup> We turn to each question presented by ADB.

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<sup>3</sup> ADB letter to APOC dated May 17, 2012. Attachment B.

<sup>4</sup> This part of the facts became apparent to Staff in the May 17, 2012 letter.

<sup>5</sup> An independent expenditure "means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign

- 1. Please confirm our understanding that in order to form an IEG, ADB must register just as any other “Group” does. In the appropriate box (page 9 of 12 of the current form provided by APOC) ADB should select “independent expenditure group” and provide a short explanation of ADB’s general purpose**

Yes, before making an expenditure, ADB must register with the commission. ADB must register on the commission’s online filing system through myAlaska. On page eight of the electronic registration form, ADB will select the “type” of group it wishes to form. Page three of the form is where ADB provides an explanation of ADB’s general purpose.

- 2. Please confirm our understanding that the below explanation will satisfy the registration requirement mentioned in #1 above:**

“Alaska Deserves Better intends to promote responsible, ethical and transparent government in Alaska by providing the public with relevant information regarding candidates for state and local office.”

Staff believes that the above explanation satisfies the general registration requirement.

- 3. Please confirm that because ADB has not yet determined which candidates it intends to support or oppose, it is not required to list the names of candidates it intends to support or oppose at the time it registers with APOC.**

A list of candidates is not required. There is no requirement in statute or in regulation that requires a group, at the time of registration, to list the names of candidates it intends to support or oppose. The only requirement in regards to this issue is the naming of the group based on the intended spending by a group under AS 15.13.050(b) and (c).

- 4. Please confirm that, once ADB has registered as required and formed a political activities account, it can immediately raise contributions and make independent expenditures for and against candidates for state and local office.**

Yes. The requirement under AS 15.13.050 is that a group registers *before* making any expenditure to influence the outcome of an election. Once ADB has received confirmation that their registration statement has been “completed” by the online APOC filing system through myAlaska, ADB can immediately raise contributions and make independent expenditures for and against candidates for state and local office.

- 5. Please confirm that ADB can make independent expenditures regarding candidates *and* assumed candidates for state and local office. Specifically, please confirm that ADB can oppose or support candidates regardless of whether they have filed a Letter of Intent with APOC and whether or not the candidates have actually specified the exact office sought.**

No. ADB cannot make expenditures for or against “assumed candidates” using contributions it has lawfully raised under AS 15.13.

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treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate.” AS 15.13.400(10).

The definition of expenditure requires APOC to try and regulate advertisements which “influence the nomination...of a candidate or of any individual who files for nomination at a later date and becomes a candidate.” AS 15.13.400(6). The intent of the legislature was that APOC would regulate some spending for or against “assumed candidates,” but that raises several practical problems in this instance.<sup>6</sup>

Depending on the content of an ADB ad for an assumed candidate, APOC may or may not regulate the spending. For instance, if a specific ADB ad expressly advocates for the nomination of a candidate, AS 15.13.400(6) would require ADB to register and follow all campaign finance laws. But if the specific ADB ad dissuades an assumed candidate from seeking nomination, APOC would not regulate that ad under AS 15.13.400(6). Moreover, Alaska Statute 15.13.400(6) would require ADB to report all its ad expenditures for “assumed candidates” but only after the “assumed candidate” becomes a real candidate.

Because regulation of these ads would be so specific to the ad’s content and whether the individual subsequently becomes a candidate, APOC draws a bright line and will only regulate expenditures once the assumed candidate filed their Letter of Intent.<sup>7</sup> Thus, funds used for or against assumed candidates will not be regulated by APOC and no regulated funds in a political activities account should be used for these purposes.

**6. Please confirm that, so long as ADB intends to support and/or oppose multiple candidates and intends to expend 33 1/3 percent or less of its funds in any year on any one race it can use its current name and need not incorporate the name of any candidate.**

Yes. Because ADB will likely make independent expenditures in multiple candidate races (statewide and local), the rule requiring it to place the name of a specific candidate in its group name does not apply at the outset.

The 33 1/3 percent requirement set out in AS 15.13.050(b) is meant for those groups who are forming with the direct intention of supporting or opposing a single candidate. It requires a group to place some variation of the candidate’s name in the group name if the group intends to spend more than 33 1/3 percent on one candidate.

Given the limited facts provided, it would not be practical or reasonable to apply the 33 1/3 percent rule to ADB. ADB told staff that if it ever spends more than 33 1/3 percent of its funds on a single candidate at any given time, it would be momentary, inadvertent and it would be eclipsed by other spending shortly thereafter. It is not practical for ADB to have to change its name multiple times in the course of an election season.<sup>8</sup>

So few facts were provided by ADB; this advisory opinion does not fully insulate ADB from all complaints. If ADB—throughout a campaign cycle—was over and above spending all its money on a single candidate without following the 33 1/3 percent rule, the Commission could find for a violation.

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<sup>6</sup> This is a matter of first impression for APOC. APOC typically regulates group expenditures once the “assumed candidate” becomes a real candidate for political office.

<sup>7</sup> *But See APOC v. David Scott* 11-16-CD (ruling that APOC regulates the candidate who makes expenditures before filing for candidacy); *APOC v. Don Smith* 11-17-CD (same).

<sup>8</sup> On May 11, 2012, (Attachment B) ADB asked for clarification whether it would have to amend its name if it spent more than 33 1/3 percent of its money in a calendar year. Given that APOC has provided a less stringent standard here, APOC will not answer ADB’s more specific question; whether the 33 1/3 percent is calculated over a year, election cycle, or some other increment.

**7. Please confirm that, as an IEG, ADB can obtain contributions and make independent expenditures in unlimited amounts, with no restriction on the amounts or sources.**

Although current Alaska statutes and regulations limit the dollar amount of contributions ADB can receive, it appears that the United States Supreme Court's decision in *Citizens United v. FEC*<sup>9</sup> has potentially rendered these restrictions unconstitutional as applied to groups that make only independent expenditures. As a result, ADB—as an independent expenditure group—can obtain contributions in unlimited amounts, with no restriction on the amounts or sources.

Under current Alaska law, contribution restrictions apply to ADB whereby it may receive, each year, contributions of no more than: (1) \$500 from an individual; and (2) \$1,000 from a different group organized under Alaska's campaign finance laws (so long as the group is not a political party).<sup>10</sup> Additionally, ADB may not solicit or receive contributions from: (1) an individual who is not a resident of the state at the time the contribution is made, except as provided in AS 15.13.072(f); (2) a foreign national as described in AS 15.13.068; or (3) from an entity described in AS 15.13.074(f). With the exception of the foreign national restriction,<sup>11</sup> APOC Staff concludes that the remainder of the contribution restrictions in AS 15.13 are likely unconstitutional for independent expenditure only groups like ADB.

In 2010, Alaska's Attorney General concluded that after *Citizens United*, Alaska may not prohibit political speech by corporations and labor unions altogether.<sup>12</sup> As a result, any Alaska law prohibiting independent expenditures by corporations and labor unions in a candidate election is also likely unconstitutional.

Although *Citizens United* directly implicated only one aspect of Alaska's campaign finance laws, notably Alaska's prohibition on independent expenditures by corporations or labor unions in candidate elections, *Citizens United* has also affected the validity of other campaign finance laws. Applying the holding of *Citizens United* to groups like ADB, several federal district and appellate courts have invalidated other states' restrictions on amounts of contributions to organizations that make only independent campaign expenditures.<sup>13</sup>

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<sup>9</sup> *Citizens United v. FEC*, 558 U.S.6, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010).

<sup>10</sup> AS 15.13.070(b)(1) and (c)(2); 2 AAC 50.290(a)(2)(B); *but see* AS 15.13.065(c) (these limitations do not apply to ballot groups).

<sup>11</sup> *Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281 (D.D.C. 2011) *as aff'd in* 132 S. Ct. 1087, 181 L. Ed. 2d 726 (U.S. 2012) (affirming the D.C. Circuit's decision that foreign nationals, who resided and worked in United States on temporary work visas, may be prohibited from making political contributions).

<sup>12</sup> Exhibit 1 – Attorney General Analysis of *Citizens United v. Federal Election Commission* and its Impact on Alaska Campaign Finance Laws.

<sup>13</sup> *See e.g., Thalheimer v. City of San Diego*, 645 F.3d 1109, 1121-22 (9th Cir. 2011) (upholding preliminary injunction against enforcement of San Diego ordinance which limited fund raising to independent political committees); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 687 (9th Cir. 2010) (striking down a challenge to a city ordinance prohibiting persons or groups engaged in independent expenditures from accepting contributions above specified limits); *Wisc. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 154-55 (7th Cir. 2011) (permanently enjoining Wisconsin from enforcing contribution limits as applied to organizations that engage only in independent expenditures for political speech); *Yamada v. Weaver*, 2012 WL 983559 (D. Hawai'i) (permanently enjoining Hawai'i from enforcing contribution limits as applied to contributions made to entities that engage solely in independent expenditure activity).



Given the status of laws similar to Alaska’s that have been found invalid in the 9<sup>th</sup> Circuit Court of Appeals and in other circuits, APOC Staff recommends that ADB’s proposed contribution activity be allowed because the statutory limitation to that activity may be unconstitutional.

- 8. Please confirm that contributions made to ADB, which will not be designated for support or opposition of a particular identified candidate or ballot measure, which are deposited by ADB into its political activities account, and are subject to disclosure and reporting under AS 15.13.040 and .110 are not donations “using the name of another” under AS 15.13.074 and that ADB is the “true source” of any such funds.**

This question does not state all relevant facts or outline a specific transaction or activity required in AS 15.13.374.<sup>14</sup> To the extent APOC can answer, it wants to reiterate that the group is charged with knowing the true source of its donations. Without exception groups that fail to report accurate true sources are subject to potential complaints.

The “true source” of the funds placed in ADB’s PA account are the persons actually making the contributions; not the conduit. ADB is not the “true source” of those funds deposited in their PA account.<sup>15</sup>

The generic description of ADB’s proposed PA Account activity does not constitute obtaining contributions “using the name of another”. When an individual, corporation or labor union makes a direct contribution from their own funds to ADB, ADB will deposit the contributions into its PA Account. When the deposited contributions are used as independent expenditures, both the contributions to ADB and the expenditures made by ADB will be reported under AS 15.13.040 and .110. Communications that are paid for by the PA Account will be accompanied by required the communication identification requirements under AS 15.13.090 including the listing of the top three contributors.

ADB has not insulated itself from allegations in this request. If facts can establish that a group accepts contributions through conduits in an attempt to shade from the public the true source of funds, groups will be held accountable for that conduct. ADB must, for instance, take reasonable steps following up with a phone call, email or by post mail to ensure that the contributions it obtains are from the true source of the funds. The Commission’s opinion should leave no room for plausible deniability.

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<sup>14</sup> The question still does not raise sufficient facts even after ADB twice submitted follow up question to APOC Staff.

<sup>15</sup> AS 15.13.040(p) and .110; 2 AAC 50.258; *See also* 2001 Inf. Op. Att’y Gen. (May 5; 883-01-0051) (holding that the true source of funds is the “ultimate” source of funds). In 2009, APOC Staff alleged that Americans For Job Security (“AJS”) was a pass through entity. APOC Staff alleged that AJS quickly passed almost all the money it received from one individual to Alaskans for Clean Water (“AFCW”) in an effort to sanitize the individual’s contributions from the public. See generally *Pebble Partnership et al. v. Renewable Resources et al.*, 09-231-APO; 09-01 CD for more guidance on this issue. All parties, including the entity which finally received contributions and made the expenditures, can be the subject of a complaint for accepting and failing to report contributions which are not from the true source of funds.

- 9. Please confirm that, so long as ADB does not, with respect to any expenditure – consult with, cooperate with, or act at the request of, or with the prior consent of any candidate, any candidate’s campaign treasurer or deputy campaign treasurer, or any other person acting as the principal or agent of the candidate – such expenditures will not be considered contributions to that candidate under Alaska law.<sup>16</sup>**

ADB did not provide Staff any specific transaction with a candidate for which to provide advice. However, APOC wishes to clarify that any coordination with candidates for independent expenditure only groups will be the subject of a complaint given that these groups can raise unlimited amounts of money.

When groups create expenditures, any direct or indirect consultation or cooperation with the candidate converts the expenditure into a contribution. The commission has had previous advisory opinions in AO-05-01-CD and AO-10-35-CD that might help address some of the concerns ADB might have. But to the extent AO-05-01-CD permits groups to make even some contact with candidates to obtain materials, Staff finds this position unworkable in the context of an independent expenditure only group.

ADB’s provided APOC Staff only a reiteration of the law and its intent to follow those laws. ADB intends to use in its independent expenditures, limited portions of statements, speeches, interviews, or campaign messages for the purposes of commenting, criticizing or praising candidates. These will not involve reproduction of significant portions of candidate's campaign materials. Any portions used will be obtained only from publically available sources and will be placed in television or radio broadcasts, websites, newspapers and/or mailings. ADB will not use any such materials or portions at the suggestion, coordination, request or prior consent of any candidate, campaign treasurer, assistant treasurer, consultant, agent or principal of any candidate or campaign. Their description, although not specific to a particular ad, does not raise any general concerns for APOC.

Again, ADB has not provided any specific transaction for which APOC could provide any meaningful guidance. If there is any coordination between the candidate and the group in any aspect of creating or financing ads, APOC would investigate that activity and likely find for serious violation, particularly in this case where ADB intends to make unlimited independent expenditures.

- 10. Please confirm that an incidental reproduction or showing of a candidate’s picture, image or likeness from a publically available source such as a website, television or mailing in a communication paid for by ADB will not be considered a contribution to that candidate under Alaska law.**

This question does not state all relevant facts or outline a specific transaction or activity required in AS 15.13.374. However, the commission has had previous advisory opinions in AO-05-01-CD and AO-10-35-CD that might help address some of the concerns ADB might have. But to the extent AO-05-01-CD permits groups to make contacts with candidates to obtain materials, Staff finds this position unworkable. The group should have no contact with the candidate to obtain source material for its independent expenditures. ADB is encouraged to contact staff with any specific questions about this issue if they are concerned whether a specific use is or is not truly incidental.

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<sup>16</sup> On May 11, 2012 (Attachment B), ADB asked for clarification without asking a new question.

- 11. Please confirm that incidental republication, reproduction or showing of a portion of a campaign message which is obtained from a publically available source such as a website, radio or television broadcast, or newspaper or mailing and which is not used at the suggestion, coordination, request or prior consent of any candidate, campaign treasurer, assistant treasurer, consultant, agent or principal of a campaign, will not be considered a contribution to that candidate under Alaska law.**

This question does not state all relevant facts or outline a specific transaction or activity required in AS 15.13.374. However, the commission has had previous advisory opinions in AO-05-01-CD and AO-10-35-CD that might help address some of the concerns ADB might have. To the extent AO-05-01-CD permits groups to make contacts with candidates to obtain expenditure materials, Staff finds this position unworkable. The group should have no contact with the candidate to obtain source material for its independent expenditures. ADB is encouraged to contact staff with any specific questions about this issue.

- 12. Please confirm that, apart from the reporting requirements imposed in AS 15.13.040 and .110 applicable to all groups, an IEG such as ADB does not bear any additional reporting requirements.**

ADB will comply with the reporting requirements set out in AS 15.13.040 and .110 and preserve all records required under AS 15.13.111. The group will file all campaign disclosure reports for each election that it registers to participate in. In addition to reporting expenditures on their campaign disclosure reports, any and all independent expenditure activity that ADB engages in as a group will be reported on a 15-6 independent expenditures form within ten days of incurring the expense or within 24 hours if the expenditure was incurred in the last nine days of the election. AS 15.13.110(h) and 2 AAC 50.270. Moreover, ADB is required to ensure that the contributions it obtains are from the true source of funds.

- 13. Please confirm that, apart from the identification requirements in AS 15.13.090 and .135(b)(2), ADB's communications will not be required to include any other information or disclaimers.**

Any communication that is made to influence the outcome of an election must be identified under the requirements of AS 15.13.090 and .135(b)(2).<sup>17</sup> ADB is encouraged to contact staff with any specific activity or transaction about this issue.

- 14. Please confirm that so long as the list of top contributors required by the provisions of AS 15.13.090 is correct at the time the communication is printed or originally produced and distributed, the requirements of that section are met.**

There is limited flexibility in updating disclaimers on ads.

Alaska Statute 15.13.090 requires the top three contributors to be placed on an ad so that the public can know who is funding the speech intended to influence their vote.

ADB is concerned about the timing involved with changing its top three contributor language. ADB provided two possible scenarios that may happen this campaign season. First, ADB asks what to do if they buy a scheduled run of ads with a certain list of top three contributors, and while that ad spot is running, ADB receives a large donation and the top three contributors change. ADB asks whether it may continue to run the ad or whether it should be immediately pulled to avoid complaints. To the extent possible, ADB needs to update the top three contributor language on its ads if a large contribution comes in. APOC is not inflexible and ADB should contact

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<sup>17</sup> See also 2 AAC 50.306 for guidance regarding disclaimers.

APOC if this occurs.<sup>18</sup> Second, ADB is concerned with archived material and asks whether it needs to update archived material, for instance, on its own website. Again, to the extent possible, the material should reflect the top three contributors to avoid any and all complaints.

Staff wants to make clear that the top three contributors listed in the advertisement should reflect, as much as possible, the actual top three contributors trying to influence the election. In other words, ADB, or any other person, should be careful in creating an advertisement ten months in advance of an election because it may not accurately disclose the actual top three contributors at the time the advertisement gets disseminated to the public. ADB should always ask itself, which contributors made the ad and its dissemination possible. When the contributors change so too must the ads. ADB is encouraged to contact staff with any specific questions about this issue. The original spot may be out of compliance.

### **CONCLUSION**

ADB must comply with all campaign finance laws and seek guidance from APOC in specific situations to avoid complaints.

### **COMMISSION DECISION**

On June 6, 2012 the Commission approved this advisory opinion by a vote of 4 - 0.

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<sup>18</sup> Past campaigns have shown that the top three contributor lists remains the same for a good part of the campaign. However, in the event that the top three contributors change during the run of an ad, ADB is encouraged to contact staff.

## **APPLICABLE LAW**

### **STATUTES**

#### **Sec. 15.13.010. Applicability.**

(a) This chapter applies

(1) in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking judicial retention;

(2) to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Commerce, Community, and Economic Development unless the municipality has exempted itself from the provisions of this chapter; a municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800 (20), or a special municipality-wide election called for that purpose, votes to exempt its elected municipal officers from the requirements of this chapter; the question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election.

(b) Except as otherwise provided, this chapter applies to contributions, expenditures, and communications made for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

(c) This chapter does not prohibit a municipality from regulating by ordinance election campaign contributions and expenditures in municipal elections, or from regulating those campaign contributions and expenditures more strictly than provided in this chapter.

(d) This chapter does not limit the authority of a person to make contributions to influence the outcome of a voter proposition submitted to the public for a vote at a municipal election. In this subsection, in addition to its meaning under AS 15.13.065 (c), "proposition" means a municipal reclassification, proposal to adopt or amend a home rule charter, a unification proposal, a boundary change proposal, or the approval of an ordinance when approval by public vote is a requirement for the ordinance.

#### **Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported.**

(a) Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,

(1) listing

(A) the date and amount of all expenditures made by the candidate;

(B) the total amount of all contributions, including all funds contributed by the candidate;

(C) the name, address, date, and amount contributed by each contributor; and

(D) for contributions in excess of \$50 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(2) filed in accordance with AS 15.13.110 and certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; for purposes of this paragraph, "contributor" means the true source of the funds, property, or services being contributed; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred, or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every person making an independent expenditure shall make a full report of expenditures made and contributions received, upon a form prescribed by the commission, unless exempt from reporting.

(e) Each person required to report under (d) of this section shall file a full report in accordance with AS 15.13.110 (h) on a form prescribed by the commission. The report must contain

(1) the name, address, principal occupation, and employer of the individual filing the report;

(2) an itemized list of all expenditures made, incurred, or authorized by the person;

(3) the name of the candidate or the title of the ballot proposition or question supported or opposed by each expenditure and whether the expenditure is made to support or oppose the candidate or ballot proposition or question;

(4) the name and address of each officer and director, when applicable;

(5) the aggregate amount of all contributions made to the person, if any, for the purpose of influencing the outcome of an election; for all contributions, the date of the contribution and amount contributed by each contributor; and, for a contributor

(A) who is an individual, the name and address of the contributor and, for contributions in excess of \$50 in the aggregate during a calendar year, the name, address, principal occupation, and employer of the contributor; or

(B) that is not an individual, the name and address of the contributor and the name and address of each officer and director of the contributor.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

(g) The provisions of (a) and (l) of this section do not apply to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under AS 15.13.010, if that delegate, judge, or candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than \$5,000 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than \$5,000 in seeking election to office, including both the primary and general elections; and

(3) makes expenditures totaling not more than \$5,000 in seeking election to office, including both the primary and general elections.

(h) The provisions of (d) of this section do not apply to one or more expenditures made by an individual acting independently of any other person if the expenditures

(1) cumulatively do not exceed \$500 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not political signs is not determinative of whether the owner customarily does so for political signs.

(j) Except as provided in (l) of this section, each nongroup entity shall make a full report in accordance with AS 15.13.110 upon a form prescribed by the commission and certified by the nongroup entity's treasurer, listing

(1) the name and address of each officer and director of the nongroup entity;

(2) the aggregate amount of all contributions made to the nongroup entity for the purpose of influencing the outcome of an election;

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor and, for all contributions described in (2) of this subsection in excess of \$250 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(4) the date and amount of all contributions made by the nongroup entity, and, except as provided for certain independent expenditures in AS 15.13.135 (a), all expenditures made, incurred, or authorized by the nongroup entity, for the purpose of influencing the outcome of an election; a nongroup entity shall report contributions made to a different nongroup entity for the purpose of influencing the outcome of an election and expenditures made on behalf of a different nongroup entity for the purpose of influencing the outcome of an election as soon as the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election reach \$500 in a year and for all subsequent contributions and expenditures to that nongroup entity in a year whenever the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election that have not been reported under this paragraph reach \$500.

(k) Every individual, person, nongroup entity, or group contributing a total of \$500 or more to a group organized for the principal purpose of influencing the outcome of a proposition, and every individual, person, nongroup entity, or group contributing a total of \$500 or more to a group organized for the principal purpose of filing an initiative proposal application under AS 15.45.020 or that has filed an initiative proposal application under AS 15.45.020, shall report the contribution or

contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

(l) Notwithstanding (a), (b), and (j) of this section, for any fund-raising activity in which contributions are in amounts or values that do not exceed \$50 a person, the candidate, group, or nongroup entity shall report contributions and expenditures and supplying of services under this subsection as follows:

(1) a report under this subsection must

(A) describe the fund-raising activity;

(B) include the number of persons making contributions and the total proceeds from the activity;

(C) report all contributions made for the fund-raising activity that do not exceed \$50 a person in amount or value; if a contribution for the fund-raising activity exceeds \$50, the contribution shall be reported under (a), (b), and (j) of this section;

(2) for purposes of this subsection,

(A) "contribution" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity;

(B) "fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are \$50 a person or less in amount or value.

(m) Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:

(1) information submitted by

(A) a candidate for election to a borough or city office of mayor, membership on a borough assembly, city council, or school board, or any state office, who meets the requirements of (g)(1) - (3) of this section; or

(B) a candidate for municipal office for a municipality with a population of less than 15,000; in this subparagraph, "municipal office" means the office of an elected borough or city

(i) mayor; or

(ii) assembly, council, or school board member;

(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement.

(n) The commission shall print the forms to be provided under this chapter so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page.

(o) Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.

(p) For purposes of (b), (e), and (j) of this section, "contributor" means the true source of the funds, property, or services being contributed.

(q) For purposes of (e) of this section,

(1) "director" means a member of the board of directors of a corporation or any person performing a similar function with respect to any organization;

(2) "officer" means a president, vice-president, secretary, treasurer, principal financial officer, or comptroller of a corporation, or any person routinely performing functions similar to those of a president, vice-president, secretary, treasurer, principal financial officer, or comptroller with respect to any organization.

#### **Sec. 15.13.050. Registration before expenditure.**

(a) Before making an expenditure in support of or in opposition to a candidate or before making an expenditure in support of or in opposition to a ballot proposition or question or to an initiative proposal application filed with the lieutenant governor under AS 15.45.020, each person other than an individual shall register, on forms provided by the commission, with the commission.

(b) If a group intends to support only one candidate or to contribute to or expend on behalf of one candidate 33 1/3 percent or more of its funds, the name of the candidate shall be a part of the name of the group. If the group intends to oppose only one candidate or to contribute its funds in opposition to or make expenditures in opposition to a candidate, the group's name must clearly state that it opposes that candidate by using a word such as "opposes," "opposing," "in

opposition to," or "against" in the group's name. Promptly upon receiving the registration, the commission shall notify the candidate of the group's organization and intent. A candidate may register more than one group to support the candidate; however, multiple groups controlled by a single candidate shall be treated as a single group for purposes of the contribution limit in AS 15.13.070 (b)(1).

(c) If a group intends to make more than 50 percent of its contributions or expenditures in support of or in opposition to a single initiative on the ballot, the title or common name of the initiative must be a part of the name of the group. If the group intends to make more than 50 percent of its contributions or expenditures in opposition to a single initiative on the ballot, the group's name must clearly state that the group opposes that initiative by using a word such as "opposes," "opposing," "in opposition to," or "against" in the group's name.

**Sec. 15.13.052. Independent expenditures; political activities accounts.**

(a) Before making an independent expenditure in support of or in opposition to a candidate or before making an independent expenditure in support of or in opposition to a ballot proposition or question, each person other than an individual, candidate, or nongroup entity with an annual operating budget of \$250 or less shall establish a political activities account. The political activities account may be a separate account in the person's general treasury. The political activities account must be administered using generally accepted accounting principles. All funds used by the person to make independent expenditures must be drawn from the person's political activities account.

(b) Records necessary to substantiate that the requirements of (a) of this section have been met must be made available for inspection by the commission.

(c) Each person who has established a political activities account under this section shall preserve all records necessary to substantiate the person's compliance with the requirements of this section for each of the six preceding years.

**Sec. 15.13.065. Contributions.**

(a) Individuals, groups, nongroup entities, and political parties may make contributions to a candidate. An individual, group, or nongroup entity may make a contribution to a group, to a nongroup entity, or to a political party.

(b) A political party may contribute to a subordinate unit of the political party, and a subordinate unit of a political party may contribute to the political party of which it is a subordinate unit.

(c) Except for reports required by AS 15.13.040 and 15.13.110 and except for the requirements of AS 15.13.050 , 15.13.060, and 15.13.112 - 15.13.114, the provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition. In this subsection, in addition to its meaning in AS 15.80.010 , "proposition" includes

(1) an issue placed on a ballot to determine whether

(A) a constitutional convention shall be called;

(B) a debt shall be contracted;

(C) an advisory question shall be approved or rejected; or

(D) a municipality shall be incorporated;

(2) an initiative proposal application filed with the lieutenant governor under AS 15.45.020 .

**Sec. 15.13.068. Expenditures and contributions by foreign nationals.**

(a) A foreign national may not, directly or indirectly, in connection with an election under this chapter, make a contribution or expenditure or make an express or implied promise to make a contribution or expenditure.

(b) The provisions of this section prohibit a foreign national from making a contribution or expenditure in connection with a state election only to the extent

(1) that federal law prohibits a foreign national from making a contribution or expenditure in connection with a state election; and

(2) permitted by federal law.

(c) In this section, "foreign national" includes

(1) an individual who is not a United States citizen or lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20);

(2) a foreign government, every political subdivision of a foreign government, every official, agent, or representative of a foreign government, and every agency, corporation, or instrumentality of the foreign government or of a political subdivision of a foreign government;



(3) a person outside of the United States, unless it is established that the person is an individual and a citizen of and domiciled in the United States, or that the person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business in the United States; or

(4) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

**Sec. 15.13.070. Limitations on amount of political contributions.**

(a) An individual or group may make contributions, subject only to the limitations of this chapter and AS 24.45, including the limitations on the maximum amounts set out in this section.

(b) An individual may contribute not more than

(1) \$500 per year to a nongroup entity for the purpose of influencing the nomination or election of a candidate, to a candidate, to an individual who conducts a write-in campaign as a candidate, or to a group that is not a political party;

(2) \$5,000 per year to a political party.

(c) A group that is not a political party may contribute not more than \$1,000 per year

(1) to a candidate, or to an individual who conducts a write-in campaign as a candidate;

(2) to another group, to a nongroup entity, or to a political party.

(d) A political party may contribute to a candidate, or to an individual who conducts a write-in campaign, for the following offices an amount not to exceed

(1) \$100,000 per year, if the election is for governor or lieutenant governor;

(2) \$15,000 per year, if the election is for the state senate;

(3) \$10,000 per year, if the election is for the state house of representatives; and

(4) \$5,000 per year, if the election is for

(A) delegate to a constitutional convention;

(B) judge seeking retention; or

(C) municipal office.

(e) This section does not prohibit a candidate from using up to a total of \$1,000 from campaign contributions in a year to pay the cost of

(1) attendance by a candidate or guests of the candidate at an event or other function sponsored by a political party or by a subordinate unit of a political party;

(2) membership in a political party, subordinate unit of a political party, or other entity within a political party, or subscription to a publication from a political party; or

(3) co-sponsorship of an event or other function sponsored by a political party or by a subordinate unit of a political party.

(f) A nongroup entity may contribute not more than \$1,000 a year to another nongroup entity for the purpose of influencing the nomination or election of a candidate, to a candidate, to an individual who conducts a write-in campaign as a candidate, to a group, or to a political party.

**Sec. 15.13.074. Prohibited contributions.**

(a) A person, group, or nongroup entity may not make a contribution if the making of the contribution would violate this chapter.

(b) A person or group may not make a contribution anonymously, using a fictitious name, or using the name of another.

(c) A person or group may not make a contribution

(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 when the office is to be filled at a general election before the date that is 18 months before the general election;

(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or

(3) to any candidate later than the 45th day

(A) after the date of the primary election if the candidate was not nominated at the primary election; or

- (B) after the date of the general election, or after the date of a municipal or municipal runoff election.
- (d) A person or group may not make a contribution to a candidate or a person or group who is prohibited by

**AS 15.13.072 (c) from accepting it.**

(e) A person or group may not make a cash contribution that exceeds \$100.

(f) A corporation, company, partnership, firm, association, entity recognized as tax-exempt under 26 U.S.C. 501(c)(3) (Internal Revenue Code), organization, business trust or surety, labor union, or publicly funded entity that does not satisfy the definition of group or nongroup entity in AS 15.13.400 may not make a contribution to a candidate, group, or nongroup entity.

(g) An individual required to register as a lobbyist under AS 24.45 may not make a contribution to a candidate for the legislature at any time the individual is subject to the registration requirement under AS 24.45 and for one year after the date of the individual's initial registration or its renewal. However, the individual may make a contribution under this section to a candidate for the legislature in a district in which the individual is eligible to vote or will be eligible to vote on the date of the election. An individual who is subject to the restrictions of this subsection shall report to the commission, on a form provided by the commission, each contribution made while required to register as a lobbyist under AS 24.45. Upon request of the commission, the information required under this subsection shall be submitted electronically. This subsection does not apply to a representational lobbyist as defined in regulations of the commission.

(h) Notwithstanding AS 15.13.070, a candidate for governor or lieutenant governor and a group that is not a political party and that, under the definition of the term "group," is presumed to be controlled by a candidate for governor or lieutenant governor, may not make a contribution to a candidate for another office, to a person who conducts a write-in campaign as a candidate for other office, or to another group of amounts received by that candidate or controlled group as contributions between January 1 and the date of the general election of the year of a general election for an election for governor and lieutenant governor. This subsection does not prohibit

(1) the group described in this subsection from making contributions to the candidates for governor and lieutenant governor whom the group supports; or

(2) the governor or lieutenant governor, or the group described in this subsection, from making contributions under AS 15.13.116 (a)(2)(A).

(i) A nongroup entity may not solicit or accept a contribution to be used for the purpose of influencing the outcome of an election unless the potential contributor is notified that the contribution may be used for that purpose.

**Sec. 15.13.090. Identification of communication.**

(a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the person paying for the communication. In addition, except as provided by (d) of this section, a person shall clearly

(1) provide the person's address or the person's principal place of business;

(2) for a person other than an individual or candidate, include

(A) the name and title of the person's principal officer;

(B) a statement from the principal officer approving the communication; and

(C) identification of the name and city and state of residence or principal place of business, as applicable, of each of the person's three largest contributors under AS 15.13.040 (e)(5), if any, during the 12-month period before the date of the communication.

(b) The provisions of (a) of this section do not apply when the communication

(1) is paid for by an individual acting independently of any other person;

(2) is made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065 (c); and

(3) is made for

(A) a billboard or sign; or

(B) printed material other than an advertisement made in a newspaper or other periodical.

(c) To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication that includes a print or video component must have the following statement or statements placed in the communication so as to be easily discernible:

This communication was paid for by (person's name and city and state of principal place of business).

The top contributors of (person's name) are (the name and city and state of

residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(C)).

(d) Notwithstanding the requirements of (a) of this section, in a communication transmitted through radio or other audio media and in a communication that includes an audio component, the following statements must be read in a manner that is easily heard; the second statement is not required if the person paying for the communication has no contributors:

This communication was paid for by (person's name).  
The top contributors of (person's name) are (the name of the largest contributors to the person under AS 15.13.090 (a)(2)(C)).

(e) Contributors required to be identified under (a)(2)(C) of this section must be listed in order of the amount of their contributions. If more than three of the largest contributors to a person paying for a communication contribute equal amounts, the person may select which of the contributors of equal amounts to identify under (a)(2)(C) of this section. In no case shall a person be required to identify more than three contributors under (a)(2)(C) of this section.

(f) The provisions of this subsection apply to a person who makes an independent expenditure for a communication described in (a) of this section. If the person paying for the communication is not a natural person, the provisions also apply to the responsible officer or officers of the corporation, company, partnership, firm, association, organization, labor organization, business trust, or society who approve the independent expenditure for the communication. A person who makes a communication under this subsection may not, with actual malice, include within or as a part of the communication a false statement of material fact about a candidate for election to public office that constitutes defamation of the candidate. For purposes of this subsection, a statement constitutes defamation of the candidate if the statement

- (1) exposes the candidate to strong disapproval, contempt, ridicule, or reproach; or
- (2) tends to deprive the candidate of the benefit of public confidence.

#### **Sec. 15.13.110. Filing of reports.**

(a) Each candidate, group, and nongroup entity shall make a full report in accordance with AS 15.13.040 for the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report. If the report is a first report, it must cover the period from the beginning of the campaign to the date three days before the due date of the report. If the report is a report due February 15, it must cover the period beginning on the last day covered by the most recent previous report or on the day that the campaign started, whichever is later, and ending on February 1 of that year. The report shall be filed

- (1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;
- (2) one week before the election;
- (3) 105 days after a special election; and
- (4) February 15 for expenditures made and contributions received that were not reported previously, including, if applicable, all amounts expended from a public office expense term account established under AS 15.13.116(a)(8) and all amounts expended from a municipal office account under AS 15.13.116 (a)(9), or when expenditures were not made or contributions were not received during the previous year.

(b) Each contribution that exceeds \$250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the candidate, group, campaign treasurer, or deputy campaign treasurer. Each contribution to a nongroup entity for the purpose of influencing the outcome of an election that exceeds \$250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the nongroup entity.

(c) All reports required by this chapter shall be filed with the commission's central office and shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) *[Repealed, Sec. 35 ch 126 SLA 1994].*

(e) A group formed to sponsor a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter, each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

(f) During the year in which the election is scheduled, each of the following shall file the campaign disclosure reports in the manner and at the times required by this section:

(1) a person who, under the regulations adopted by the commission to implement AS 15.13.100, indicates an intention to become a candidate for elective state executive or legislative office;

(2) a person who has filed a nominating petition under AS 15.25.140 - 15.25.200 to become a candidate at the general election for elective state executive or legislative office;

(3) a person who campaigns as a write-in candidate for elective state executive or legislative office at the general election; and

(4) a group or nongroup entity that receives contributions or makes expenditures on behalf of or in opposition to a person described in (1) - (3) of this subsection, except as provided for certain independent expenditures by nongroup entities in AS 15.13.135 (a).

(g) An initiative committee, person, group, or nongroup entity receiving contributions exceeding \$500 or making expenditures exceeding \$500 in a calendar year in support of or in opposition to an initiative on the ballot in a statewide election or an initiative proposal application filed with the lieutenant governor under AS 15.45.020 shall file a report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) and (b) of this section. If the report is a first report, it must cover the period beginning on the day an initiative proposal application is filed under AS 15.45.020 and ending three days before the due date of the report.

(h) An independent expenditure report required under AS 15.13.040(e) shall be filed with the commission not later than 10 days after an independent expenditure has been made. However, an independent expenditure that exceeds \$250 and that is made within nine days of an election shall be reported to the commission not later than 24 hours after the expenditure is made.

**Sec. 15.13.111. Preservation of records.**

(a) Each person required to report under this chapter shall preserve all records necessary to substantiate information required to be reported under this chapter for a period of six years from the date of the election for which the information was required to be reported, unless the records have been submitted to the commission under (c) of this section.

(b) Information preserved under (a) of this section must be made available for inspection by the commission.

(c) A candidate for state elected office who was not elected or a person who has left state elected office may submit the records required to be preserved under (a) of this section to the commission electronically. Records submitted under this subsection shall be preserved by the commission for a period of six years from the date of the election for which the information was required to be reported.

**Sec. 15.13.112. Uses of campaign contributions held by candidate or group.**

(a) Except as otherwise provided, campaign contributions held by a candidate or group may be used only to pay the expenses of the candidate or group, and the campaign expenses incurred by the candidate or group, that reasonably relate to election campaign activities, and in those cases only as authorized by this chapter.

(b) Campaign contributions held by a candidate or group may not be

(1) used to give a personal benefit to the candidate or to another person;

(2) converted to personal income of the candidate;

(3) loaned to a person;

(4) knowingly used to pay more than the fair market value for goods or services purchased for the campaign;

(5) used to pay a criminal fine;

(6) used to pay civil penalties; however, campaign contributions held by a candidate or group may be used to pay a civil penalty assessed under this chapter if authorized by the commission or a court after it first determines that

(A) the candidate, campaign treasurer, and deputy campaign treasurer did not cause or participate in the violation for which the civil penalty is imposed and exercised a reasonable level of oversight over the campaign; and

(B) the candidate, campaign treasurer, and deputy campaign treasurer cooperated in the revelation of the violation and in its immediate correction; or

(7) used to make contributions to another candidate or to a group; however, it is not a violation of this paragraph if, in circumstances in which a candidate or group participates in a shared campaign activity, the candidate or group participating in the activity

(A) uses campaign contributions of the candidate or group for payment of

(i) all of the shared campaign activity expense; or

(ii) more than the candidate's or group's pro rata share of the activity expense; and

(B) receives, within seven days after payment of the expense, complete reimbursement of the amount of campaign contributions used for payments made on behalf of another candidate or group participating in the activity.

(c) A candidate may use up to a total of \$1,000 in campaign contributions in a year to pay the cost of

(1) attending, or paying the cost for guests of the candidate to attend, an event or other function sponsored by a political party or subordinate unit of a political party;

(2) membership in a political party, subordinate unit of a political party, or other entity within a political party, or subscription to a publication from a political party; and

(3) co-sponsorship of an event or other function sponsored by a political party or by a subordinate unit of a political party.

**Sec. 15.13.135. Independent expenditures for or against candidates.**

(a) An independent expenditure supporting or opposing a candidate for election to public office, except an independent expenditure made by a nongroup entity with an annual operating budget of \$250 or less, shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter.

(b) A person who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper, or magazine advertisement, or any other communication that supports or opposes a candidate for election to public office

(1) shall comply with AS 15.13.090 ; and

(2) shall place the following statement in the mailing, literature, advertisement, or other communication so that it is readily and easily discernible:

This NOTICE TO VOTERS is required by Alaska law. (I/we) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate.

**Sec. 15.13.374. Advisory opinion.**

(a) Any person may request an advisory opinion from the commission concerning this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50.

(b) A request for an advisory opinion

(1) must be in writing or contained in a message submitted by electronic mail;

(2) must describe a specific transaction or activity that the requesting person is presently engaged in or intends to undertake in the future;

(3) must include a description of all relevant facts, including the identity of the person requesting the advisory opinion; and

(4) may not concern a hypothetical situation or the activity of a third party.

(c) Within seven days after receiving a request satisfying the requirements of (b) of this section, the executive director of the commission shall recommend a draft advisory opinion for the commission to consider at its next meeting.

(d) The approval of a draft advisory opinion requires the affirmative vote of four members of the commission. A draft advisory opinion failing to receive four affirmative votes of the members of the commission is disapproved.

(e) A complaint under AS 15.13.380 may not be considered about a person involved in a transaction or activity that

(1) was described in an advisory opinion approved under (d) of this section;

(2) is indistinguishable from the description of an activity that was approved in an advisory opinion approved under (d) of this section; or

(3) was undertaken after the executive director of the commission recommended a draft advisory opinion under (c) of this section and before the commission acted on the draft advisory opinion under (d) of this section, if

(A) the draft advisory opinion would have approved the transaction or activity described; and

(B) the commission disapproved the draft advisory opinion.

(f) Advisory opinion requests and advisory opinions are public records subject to inspection and copying under AS 40.25.

**Sec. 15.13.400. Definitions.**

In this chapter,

(1) "candidate"

(A) means an individual who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices; and

(B) when used in a provision of this chapter that limits or prohibits the donation, solicitation, or acceptance of campaign contributions, or limits or prohibits an expenditure, includes

(i) a candidate's campaign treasurer and a deputy campaign treasurer;

(ii) a member of the candidate's immediate family;

(iii) a person acting as agent for the candidate;

(iv) the candidate's campaign committee; and

(v) a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of the candidate;

(2) "commission" means the Alaska Public Offices Commission;

(3) "communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing \$500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c);

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that is rendered to the candidate or political party, and that is made for the purpose of

(i) influencing the nomination or election of a candidate;

(ii) influencing a ballot proposition or question; or

(iii) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020 ;

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

(5) "electioneering communication" means a communication that

(A) directly or indirectly identifies a candidate;

(B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and

(C) occurs within the 30 days preceding a general or municipal election;

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party;

(iv) influencing the outcome of a ballot proposition or question; or

(v) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020 ;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

(7) "express communication" means a communication that, when read as a whole and with limited reference to outside events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate;

(8) "group" means

(A) every state and regional executive committee of a political party;

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070 , whether or not control of the group has been disclaimed by the candidate; and

(C) any combination of two or more individuals acting jointly who organize for the principal purpose of filing an initiative proposal application under AS 15.45.020 or who file an initiative proposal application under AS 15.45.020 ;

(9) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of an individual;

(10) "independent expenditure" means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate;

(11) "individual" means a natural person;

(12) "issues communication" means a communication that

(A) directly or indirectly identifies a candidate; and

(B) addresses an issue of national, state, or local political importance and does not support or oppose a candidate for election to public office.

(13) "nongroup entity" means a person, other than an individual, that takes action the major purpose of which is to influence the outcome of an election, and that

(A) cannot participate in business activities;

(B) does not have shareholders who have a claim on corporate earnings; and

(C) is independent from the influence of business corporations.

(14) "person" has the meaning given in AS 01.10.060 , and includes a labor union, nongroup entity, and a group;

(15) "political party" means any group that is a political party under AS 15.80.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

(16) "publicly funded entity" means a person, other than an individual, that receives half or more of the money on which it operates during a calendar year from government, including a public corporation.

## **REGULATIONS**

### **2 AAC 50.258. Prohibited contributions.**

(a) A contribution must be made in the name of the true source of the money or thing of value. A person may not make a contribution using the name of another, or use a third-party conduit to obscure the true source of any money or thing of value contributed to a campaign. A contribution in the name of another prohibited by this section includes any contribution

(1) made at the direction of another person, including a parent organization, subsidiary, division, department, branch, or local unit of a business, labor union, or group;

- (2) made by an employee, agent, or other person if an employer, principal, supervisor, or contractor lends, pays, or advances money or anything of value to the employee, agent, or other person to contribute in a name other than the true source of the money or thing of value;
  - (3) made by an employee, agent, or other person if an employer, principal, supervisor, or contractor reimburses the employee, agent, or other person for the contribution in money or anything of value;
  - (4) in a total amount exceeding the limitations in AS 15.13.070 if made to the same recipient by two or more groups or nongroup entities that
    - (A) share the majority of members of their boards of directors;
    - (B) share two or more corporate or organizational officers; in this subparagraph, “officer”
      - (i) has the meaning given in AS 15.13.040(q)(2); and
      - (ii) includes a chief executive officer;
    - (C) are owned or controlled by the same shareholders or members; or
    - (D) are in a parent-subsidiary relationship;
  - (5) made by a person who receives a gift of money or anything of value from a parent, spouse, or domestic partner for the purpose of making a contribution; or
  - (6) made by check from a joint bank account in the name of any joint account holder who does not either sign the check or authorize the contribution in writing at the time the contribution is made.
- (b) A candidate may not accept a contribution from a group that is resident in another state. A group is resident in another state if
- (1) the group does not have a mailing address in this state;
  - (2) the group receives more than 10 percent of its total contributions during a calendar year from individuals who are not residents of this state; or
  - (3) individuals who are not residents of this state direct or control decisions about how the group spends its money.

**2 AAC 50.270. Independent expenditures.**

- (a) Except as provided in (c) of this section, before making an independent expenditure to support or oppose a candidate, a ballot proposition, or an initiative proposal application, a person shall register as required under AS 15.13.050 on a form prescribed by the commission, and shall establish a political activities account as required under AS 15.13.052. The frequency and amount of an allowable independent expenditure is not limited.
- (b) Except as provided in (c) of this section, a person that makes an independent expenditure for any purpose shall file, as required under AS 15.13.110(h), a report of independent expenditure, on a form prescribed by the commission. An independent expenditure report must include
  - (1) the information required by AS 15.13.040(d) and (e);
  - (2) for a person other than an individual making an independent expenditure, the type of business or organization;
  - (3) the full name of a contact person for the individual or other person making the expenditure;
  - (4) the date of the expenditure;
  - (5) the amount of the expenditure;
  - (6) the check number or the identifying transaction number if paid by other means;
  - (7) the name and address of the payee; and
  - (8) a description of items or services purchased.
- (c) An individual who makes an independent expenditure that does not exceed \$500 in a calendar year for billboards, signs, or printed materials concerning a ballot proposition or initiative proposal application, is not required to register or file a statement of independent expenditure. If an individual’s independent expenditures for billboards, signs, or printed materials concerning a ballot proposition or initiative proposal application exceed \$500 in a calendar year, the individual shall file a statement of independent expenditure no later than 10 days after the amount expended exceeds \$500.

**2 AAC 50.274. Early campaigning.**

- (a) An individual intending to campaign for office shall file for nomination for the office as required under AS 15.13.100 either by submitting a letter of intent to the commission, or by filing a declaration of candidacy
  - (1) with the municipal clerk’s office for a municipal office, or
  - (2) with the lieutenant governor’s office for a state office.



- (b) An individual intending to seek state or municipal office may file a letter of intent, on a form prescribed by the commission, no earlier than 18 months before the election in which the individual intends to run. A letter of intent must state whether the individual will seek state or municipal office, but need not identify the specific seat for which the individual may file. A letter of intent must include a statement certifying that the individual will comply with the requirements of AS 15.13. A letter of intent is valid until the election identified on the form, unless the individual filing the letter of intent withdraws it before the election.
- (c) An individual may not accept a campaign contribution before filing a letter of intent or declaration of candidacy, and may not make a campaign expenditure except for personal travel expenses, opinion surveys, or polls. A person, group, or nongroup entity may not make an expenditure on behalf of an individual who is a prospective candidate before that individual files a letter of intent.
- (d) An individual who has submitted a letter of intent must also file a declaration of candidacy as provided in (a) of this section before the applicable state or municipal filing deadline.

**2 AAC 50.826. Commission decision on staff recommendation.**

- (a) The procedure in this section applies when AS 15.13.374 or any provision of this chapter authorizes the staff to prepare a draft advisory opinion or other recommended decision for the commission's review. A staff recommendation must be in writing, set out applicable facts and law, and explain the reasons for the recommendation.
- (b) After preparing a recommendation, the staff shall
  - (1) submit the recommendation to the commission for decision; and
  - (2) send a copy of the recommendation to the person that requested the opinion or exemption, or that is the subject of the matter at issue, along with notice that the recommendation has been submitted to the commission for review as provided in (c) of this section.
- (c) When the commission receives a staff recommendation prepared in compliance with this section, the commission will
  - (1) review the recommendation at the next regularly scheduled meeting of the commission unless, in its discretion, the commission schedules the matter at a different meeting; the commission will give the affected person notice of the date, time, and place the commission will consider the matter, and of the right to present an argument;
  - (2) accept, reject, or modify the staff recommendation; and
  - (3) send written notice of the commission's final decision and an order describing specifically any required action to the person that requested the opinion or exemption or is the subject of the matter at issue, at the person's address on file with the commission; in the notice the commission will state that the decision is a final commission decision and may be appealed to the superior court under AS 44.62.560.

**2 AAC 50.306. Identification of political communication**

- (a) Except for an individual exempt under AS 15.13.090 (b), a person that pays for a political communication, including a person that makes an independent expenditure, shall ensure that
  - (1) in any communication that includes a print or video component, the information required under AS 15.13.090 (a) and (c) is visible, separate from the text of the communication, and of sufficient size and duration to be read by a viewer; and
  - (2) in any communication by radio, automated telephone, or other audio media, or that includes an audio component, the information required under AS 15.13.090 (a) and (d) is spoken and audible at the same volume as the communication.
- (b) In a written communication, standard English abbreviations may be used in the information required by AS 15.13.090 (a) and (c).
- (c) The information required under AS 15.13.090 (a) and (c) need not be affixed to an object used for a political communication if the size or nature of the object makes it impractical to affix that information. Objects for which it is impractical to affix that information include pencils, pens, buttons, or other objects that are smaller than 3.5 inches by 5 inches in size but do not include media advertisements, electronic correspondence, or material on an Internet website. The cost of any object used for a political communication must be reported under AS 15.13 even if the information required under AS 15.13.090 (a) and (c) is not affixed.
- (d) A political communication by electronic media, including a candidate's or group's website, electronic mail, electronic social media, or other electronic methods capable of transmitting a political communication, must include or be electronically linked to information required by AS 15.13.090 (a) and (c). The cost of political communications by electronic media must be reported as a campaign expense under 2 AAC 50.321.
- (e) In this section, "political communication"
  - (1) has the meaning given "communication" in AS 15.13.400 ;
  - (2) includes

- (A) all material related to campaign fundraisers, campaign letterhead, thank-you notes, and press releases;
  - (B) media advertisements, electronic correspondence, or material on an Internet website, regardless of size or nature;
  - (C) except as provided under (3)(B) of this subsection, campaign signs larger than 3.5 inches by 5 inches;
- (3) does not include
- (A) envelopes paid for by the campaign that are used solely to convey the campaign's communications;
  - (B) signs created by an individual or nongroup entity for a total cost of less than \$500;
  - (C) T-shirts, ballcaps, and similar items of personal apparel of minimal value;
  - (D) berry buckets, coffee cups, water bottles, and similar objects having a principal purpose not related to campaigns or elections.